MONTANA LEGISLATIVE HISTORY

Chapter 157 19 87

Bill H 235 S _____ Original bill & history ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 26	✓ C	Hearing Date(s)	Mar 05	✓ C
	Feb 02	✓ C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Feb 02	✓ C		Mar 05	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

	SENATE		
4/21	CONFERENCE COMMITTEE APPOINTED	50	0
4/21	CONFERENCE COMMITTEE DISSOLVED	50	0
	HOUSE		
4/21	FREE CONFERENCE COMMITTEE APPOINTED		
4/21	FREE CONFERENCE COMMITTEE REPORT		
4/22	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	89	2
4/22	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	88	5
	SENATE		
4/21	FREE CONFERENCE COMMITTEE APPOINTED		
4/21	FREE CONFERENCE COMMITTEE REPORT		
4/22	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	50	0
4/22	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	47	1
4/23	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		
5/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 661 EFFECTIVE DATE: 5/19/87		

HB 234 INTRODUCED BY MENAHAN
LIMIT TO IMMEDIATELY PREVIOUS YEAR ANY BACK TAXES OR FEES OWED ON A BOAT

1/15	INTRODUCED		
1/15	REFERRED TO TAXATION		
1/15	FISCAL NOTE REQUESTED		
1/21	FISCAL NOTE RECEIVED		
2/02	HEARING		
2/02	COMMITTEE REPORT--BILL PASSED		
2/04	2ND READING PASSED	93	6
2/05	3RD READING PASSED	90	7
	TRANSMITTED TO SENATE		
2/10	REFERRED TO TAXATION		
3/18	HEARING		
	DIED IN COMMITTEE		

HB 235 INTRODUCED BY ADDY
CLARIFY PENALTY FOR FAILURE TO OBEY SUBPOENA

1/16	INTRODUCED		
1/16	REFERRED TO JUDICIARY		
1/26	HEARING		
2/02	COMMITTEE REPORT--BILL PASSED		
2/04	2ND READING PASSED	99	0
2/05	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
2/10	REFERRED TO JUDICIARY		
3/05	HEARING		
3/06	COMMITTEE REPORT--BILL CONCURRED		
3/10	2ND READING CONCURRED	50	0
3/12	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		

3/16 SIGNED BY SPEAKER
3/17 SIGNED BY PRESIDENT

3/18 TRANSMITTED TO GOVERNOR
3/22 SIGNED BY GOVERNOR
CHAPTER NUMBER 157 EFFECTIVE DATE: 10/01/87

HB 236 INTRODUCED BY ADDY
REQUIRE JUDICIAL NOMINATION COMMITTEE TO MEET BEFORE VACANCY OCCURS IN SOME CASES

1/16 INTRODUCED
1/16 REFERRED TO JUDICIARY
1/26 HEARING
2/14 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/17 2ND READING PASSED AS AMENDED 93 0
2/19 3RD READING PASSED 94 0

TRANSMITTED TO SENATE
2/21 REFERRED TO JUDICIARY
3/05 HEARING
3/12 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/17 2ND READING CONCURRED 49 1
3/19 3RD READING CONCURRED 48 1

RETURNED TO HOUSE WITH AMENDMENTS
3/25 2ND READING AMENDMENTS CONCURRED 94 1
3/26 3RD READING AMENDMENTS CONCURRED 97 0
3/31 SIGNED BY SPEAKER
4/01 SIGNED BY PRESIDENT

4/01 TRANSMITTED TO GOVERNOR
4/06 SIGNED BY GOVERNOR
CHAPTER NUMBER 344 EFFECTIVE DATE: 4/06/87

HB 237 INTRODUCED BY HARRINGTON, ET AL.
PROHIBIT SCHOOL FROM CONDUCTING PUPIL-INSTRUCTION DAYS PRIOR TO LABOR DAY

1/16 INTRODUCED
1/16 REFERRED TO EDUCATION & CULTURAL RESOURCES
2/02 HEARING
2/04 COMMITTEE REPORT--BILL NOT PASSED
2/05 ADVERSE COMMITTEE REPORT ADOPTED 74 20

HB 238 INTRODUCED BY BRADLEY
REVISE EMERGENCY AND DISASTER SERVICES
BY REQUEST OF DEPARTMENT OF MILITARY AFFAIRS

1/16 INTRODUCED
1/16 REFERRED TO STATE ADMINISTRATION
1/28 HEARING
2/03 COMMITTEE REPORT--BILL PASSED
2/05 2ND READING PASSED 94 4
2/06 3RD READING PASSED 92 4

TRANSMITTED TO SENATE
2/10 REFERRED TO STATE ADMINISTRATION
2/13 HEARING
2/24 COMMITTEE REPORT--BILL CONCURRED
3/03 2ND READING CONCURRED 50 0
3/05 3RD READING CONCURRED 48 0

RETURNED TO HOUSE

Rep. Bardanouve answered that in the eye of justice a citizen has the right to disqualify a judge. If he is doing it just to do it, it is a luxury we cannot afford. The judges feel this fee is fair.

Rep. Eudaily asked Judge Loble if there is a special provision in the law for a disqualified reason that is not stated in this bill? Judge Loble stated that it is in a statute referred to in Exhibit B. It sets out the reasons for disqualification of a judge but it is not a motion for substitution.

Rep. Bardanouve closed the hearing.

HOUSE BILL NO. 235:

Rep. Addy, District # 94, sponsor of this bill, intends to clarify procedures and to have it easier or clearer to decide how to go about accomplishing something that the statutes has always said we should be able to do. If two people get arrested, an attorney wants to try the bad actor first. The accomplice decides to refuse to testify by standing on his fifth amendment rights because he knows what ever he says can and will be used against him. An attorney will give immunity to the small fish so he can compel him to testify against the big fish. By giving immunity for anything they say they no longer have a right against self incrimination and they can be compelled to testify. If they refuse to testify, this bill provides the procedure to be followed so they can be held in contempt of court.

SUPPORTERS:

Mike McGraff, County of Lewis and Clark Attorney and Chairman for the Legislative Committee for the Montana County Attorneys Association, stated this bill was submitted at our request by Rep. Addy and it provides a procedure when a witness refuses to testify after having been granted immunity. There are two types of immunity granted in the state of Montana. One is called use-immunity, which is immunity that a prosecutor will not use any statements given against you. The second immunity is called transactual immunity. It says the prosecutor will not prosecute you for anything having to do with this transaction. Procedures

following a grant of immunity have been non existent so this bill gives the procedures. There are two types of contempt, civil and criminal. This procedure deals with civil contempt.

NO OPPONENTS

Rep. Bulger asked Mr. McGraff if immunity is granted to this person and then they decide not to testify, do they still have immunity? Mr. McGraff stated that that is a condition for immunity, the information must be supplied.

Rep. Addy closed the hearing.

HOUSE BILL NO. 236

Rep. Addy, District #94, Sponsor. This bill allows the Judicial Nominating Commission to begin its' work as soon as a judge announces he or she will resign.

Pat Melby, representing the Montana State Bar, supports this bill because as soon as a vacancy can be filled, the sooner the cases can be moved.

No other proponents or opponents.

QUESTIONS ON HB NO. 236

Rep. Eudaily questions the language of the bill. He used as an example, section 2, line 6, changing appoint to nominate. The original language was that the nominees come from the commission but the Governor does appoint and you have changed everything to nominees. Rep. Addy stated that the new judge would be the Governor's nominee until the actual retirement date where the incumbent comes to pass and then they would become the appointee of the Governor. Rep. Eudaily does not see any place in the bill that the Governor makes the appointment.

Rep. Cobb questioned Rep. Addy in regard to a judge who states he is resigning. If after nomination of another judge, the resigning judge decides to restake his position, what would happen? Rep. Addy answered that after a submitted written resignation and it is accepted, it is beyond his control to revoke it. He stated he would do more research on this statute.

eliminated. In this bill on line 21 it eliminates the small amounts and allows forfeiture for the two joint operation. Currently the District Court orders forfeiture under State law. Chairman Lory asked Mr. Murphy if we amended the bill on page 3, second line, with an insert of intent to sell, would this control it? Mr. Murphy cautioned against limiting the types of crimes the individuals have already been convicted of but this amendment should handle it.

Rep. Brandewie closed the hearing by stating that the prisons are full. This bill will act as a deterrent.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 235: Rep. Addy moved DO PASS. Rep. Bulger called question. A voice vote was taken and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 322: (Amendment attached) Rep. Daily submitted amendments. Rep. Daily moved DO PASS on the amendments. Rep. Eudaily supported Rep. Daily's amendments. Question was called and a voice vote was taken. The motion carried unanimously. Rep. Eudaily requested that he be able to amend the bill to delete new section 3, renumber subsequent sections, and that would also delete the necessity for a statement of intent. Rep. Addy asked Mr. MacMaster to respond on the rule making authority. Mr. MacMaster stated that the Department of Fish and Wildlife does not have rule making authority so they do need an extension. Question was called. A voice vote was taken on Rep. Eudaily's amendment and the amendment carried unanimously. Rep. Eudaily moved HB #322 DO PASS AS AMENDED. A voice vote was taken and all member voted in favor except Rep. Brown and Rep. Gould who opposed. HB #322 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 326: (Amendments attached) Rep. Addy moved DO PASS. Rep. Bulger moved to amend. Question was called. A voice vote was taken with all members voting in favor of the amendments with the exception of Rep. Cobb, Rep. Addy, Rep. Hannah and Rep. Brown voting in opposition. The amendment carried. Rep. Brown moved DO PASS AS AMENDED. A voice vote was taken and the motion carried unanimously. HB # 326 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 70: (Amendments attached) Rep. Miles moved amend #1, 2, 4, 5, 7, and 8. Question was called and a voice vote was taken and amendments #1, 2, 4, 5, 7, and 8 PASSED. Rep. Mercer moved to table the bill. He stated that he felt there are several things that are not clear in this bill concerning civil cases. Rep. Addy requested that the committee discuss the bill further. Rep. Mercer withdrew his motion. Rep. Hannah moved amendment #3.

STANDING COMMITTEE REPORT

February 2, 1937

Mr. Speaker: We, the committee on Judiciary

report HOUSE BILL NO. 235

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

reading copy (color)

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 5, 1987

The thirty-sixth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 5, 1987 by Vice Chairman Bruce Crippen in Room 325 of the Capitol Building.

ROLL CALL: All members were present except for Senator Brown.

CONSIDERATION OF HB 235: Representative Kelly Addy of House District #94 introduced HB 235. He said it addresses-a problem that involves two people in a commission of an offense, or one who has an accomplice in an offense. He said you give immunity to the smaller one involved to catch the bigger one in court and when the smaller one, or accomplice, refuses to testify against the bigger one because of certain reasons, what procedure do you provide. He felt this bill provides that procedure.

PROPONENTS: Mike McGrath, Lewis and Clark County Attorney and Chairman of the Montana County Attorneys Association, testified in support of the bill because county attorneys grant immunity but even after granting immunity, they still refuse to cooporate. He said under the present law if you refuse to cooperate, then that is punishable by contempt, but there isn't any procedure to follow. He stated that the bill states a person who, after being granted immunity, refuses to testify then is brought before a judge who issues the subpoena and explains the problem and then the judge has to advise the person of their rights, advise them they were granted immuntiy, advise them if they refuse to cooperate they could be held in contempt. He said the prosecutor questions the person in front of the judge and the if the person still refuses to testify then that person can be punished under civil contempt procedure. He pointed out this shows they did not commit a criminal offense but is in contempt under civil procedures. Mr. McGrath explained the story of the Butterys shooting in Helena last year where a man shot two women in the Butterys parking lot. He said there was no evidence of who it was that did this and several months later the girlfriend to this man told a friend who informed "Crime Stoppers". He explained they brought the girlfriend in and she refused to testify; so immunity was given and she still refused. He said the county was stuck at this point and finally ended up putting her in jail for three weeks, where after that time she finally testified and now the man is behind bars. He felt this bill would clarify what to do in situations like this.

OPPONENTS: None.

DISCUSSIONS ON SB 235: Senator Crippen inquired if it is easier to work

under civil procedures than criminal procedures. Mr. McGrath answered if it is a civil attempt, it is acted on immediately, but if it is a criminal contempt then a complaint has to be filed. Senator Crippen asked if there are any examples in the law where one uses civil over criminal contempt procedures. Mr. McGrath said anytime a court order is not followed, then civil contempt is used over the criminal one.

Senator Halligan asked what the maxium penalty is under the civil contempt. Mr. McGrath felt there was no specific penalty. Valencia said the fine in under section 3-1-519, which said $500 or five days in jail. Senator Halligan wondered if the five days will put someone on the spot.

Representative Addy closed.

Senator Pinsoneault moved the bill BE CONCURRED IN. Senator Beck asked if anyone can deny the person in question immunity. Representative Addy said the court can grant it or deny it. The motion CARRIED.

CONSIDERATION OF HB 236: Representative Kelly Addy of Billings presented HB 236 (see Exhibit 1).

PROPONENTS: Margret Davis, League of Women Voters, supported the bill.

OPPONENTS: None.

DISCUSSION ON HB 236: Senator Crippen asked what will happen when Justice Morrison is done; when would be the effective date on this. Representative Addy said as soon as possible.

Representative Addy closed.

CONSIDERATION OF HB 326: Represenative Kelly Addy of Billings presented HB 326 to the committee (see Exhibit 2).

PROPONENTS: Curt Chisholm, Department of Institutions, said the House Judiciary did terrible things to this bill. He said the Montana State Prison has about 450 admissions every year and about 25 percent of those are suspended sentenses cases. He said there is a provision in the law that says these people do not get time credited toward the time served on the "street". He said his department has to keep going back to the courts to get a clarification on if the judge wants the person they send us at the prison to get credit for the time he spends or not. He said the House Judiciary decided to strike "jail time" out of the bill and the Department of Institution needs that in the bill to avoid law suits.

DISCUSSION ON SB 326: Senator Halligan commented that he had trouble allowing some of these people credited time while on the "streets" where

STANDING COMMITTEE REPORT

March 5 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 235

Third reading copy (blue color)

Clarify penalty for failure to obey supoena.
Addy (Crippen)

Respectfully report as follows: That HOUSE BILL 235 No.

~~DO PASS~~

~~DO NOT PASS~~

BE CONCURRED IN

Senator Nazurek Chairman.